



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

RECEIVED

OCT 26 1987

WASTE MANAGEMENT DIV.

REPLY TO THE ATTENTION OF:

5CA-TUB-03

SEP 30 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daria L. Killinger
Levin, Levin, Garvett and Dill
3000 Town Center, Suite 1800
Southfield, Michigan 48075

Re: J.E. Berger Corporation, Detroit, Michigan
TSCA-V-C-96-87

Dear Ms. Killinger:

On September 30, 1987, a fully executed Consent Agreement and Final Order ("CAFO") for the above-titled matter was filed with the Regional Hearing Clerk. Enclosed is a copy of the filed CAFO for your records. Note that the first installment of the penalty must be paid by certified check within twenty days of today.

Thank you for your cooperation in resolving this matter.

Sincerely,

Elizabeth Schenkier

Elizabeth Schenkier
Assistant Regional Counsel

Enclosure

cc: Judge Frank W. Vanderheyden
Administrative Law Judge
Environmental Protection Agency
401 M Street, S.W. (A-110)
Washington, D.C. 20460

✓ Dr. Gordon Guyer, Director
Michigan Department of Natural Resources

Brian Monroe
Michigan Department of Natural Resources

US EPA RECORDS CENTER REGION 5



467365

compliance with the Federal regulations governing PCBs, 40 C.F.R. Part 761, et seq.

D. Count I alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 761.180(a) for failure to develop and maintain annual records on the disposition of its PCB items for calendar years 1978 through 1985 for which the Complainant sought a civil penalty of \$6,000.00.

E. Count II alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 761.30(a)(1) for failure to perform quarterly inspections, develop and maintain inspection records, clean up released PCBs, repair its leaking PCB transformer, and register its PCB transformer with fire response personnel for which the Complainant sought a civil penalty of \$3,000.00.

F. Count III alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 761.60(a) and (d), for improper disposal of PCBs through uncontrolled discharges of PCB liquids at concentrations of 50 ppm or greater and failure to properly incinerate PCB liquids at concentrations of 500 ppm or greater, for which the Complainant sought a civil penalty of \$5,000.00

G. Count IV alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 761.40(c)(1), for failure to mark PCB transformers stored for reuse in the manner required by 40 C.F.R. § 761.45(a), for which the Complainant sought a civil penalty of \$1,500.00.

H. Count V alleged violations of Section 15 of TSCA, 15 U.S.C. § 2614, and 40 C.F.R. § 761.65(a), (b), and (c)(8), for failure to properly dispose of two PCB containers within one year from the date they were placed into storage, to maintain a storage area for PCB items which complies with the storage requirements of 40 C.F.R. § 761.40(b)(1), and to date two PCB containers as to when they were placed in storage, for which Complainant sought a civil penalty of \$1,500.00.

I. The following parties discussed settlement of this action in an informal conference on May 21, 1987; Respondent's counsel, Daria Killinger and Jack Schon; Complainant's counsel, Elizabeth Schenkier; and Complainant's Environmental Specialist, Daniel Patulski.

WHEREFORE, for the purpose of this proceeding only, and without prejudice to any other proceeding;

1. Respondent hereby admits the jurisdictional allegations in the Complaint.

2. Respondent neither admits nor denies the factual allegations set forth in the Complaint.

3. Respondent waives its right to a hearing on the allegations of the Complaint.

4. Respondent certifies that it already has spent or will soon spend over \$350,000 to take the following actions to come into compliance with 40 C.F.R. Part 761 and remove all PCB items from the J.E. Berger site and other contaminated areas

under the supervision and guidance of the Michigan Department of Natural Resources:

(a) it has provided for the proper disposal of all PCB transformers, all PCB capacitors and all PCB containers at its Detroit, Michigan facility and no further PCB items remain at the facility;

(b) it will not store, use or distribute any PCB transformers or PCB capacitors for any purpose whatsoever from this date forward;

(c) it has initiated, and will complete by December 31, 1987, the clean-up of PCB-contaminated soil and surfaces on and off-site at its Detroit, Michigan facility including the sampling, analysis and, as needed, excavation and disposal of PCB-contaminated solids to the satisfaction of the U.S. EPA; and,

(d) All disposal of PCB-contaminated waste and soil shall be performed in accordance with 40 C.F.R. §761.60.

5. Respondent shall perform the requirements of this Order within the time limits set forth herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes beyond the control of and without the fault of the Respondent including, but not limited to, action of a national or local government, body or court, an act of God, war, strike, riot or catastrophe, or extreme weather, and which delays or prevents performance by a date required by this Consent Order.

Respondent must notify EPA in writing within 15 days working days after it becomes aware of events which it believes constitute a force majeure. Such notice shall estimate the anticipated length of delay, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt reasonable measures to avoid and minimize the delay.

If Respondent demonstrates to EPA that a delay or nonperformance is caused solely by a force majeure, the time for performance of that task shall be extended for a period equal to the delay resulting from such circumstances. In the event EPA does not accept Respondent's demonstration of a force majeure, EPA must notify Respondent in writing within 15 working days. If agreement cannot be reached, EPA and Respondent reserve their respective rights to undertake appropriate action as provided by law.

6. In consideration of the foregoing certifications, stipulations, and agreements, and in consideration of Respondent's cooperation shown to Complainant, Complainant agrees to mitigate the \$17,000.00 civil penalty proposed in the Complaint to \$4,000.00 payable in four equal installments.

7. The civil penalty payable hereunder shall be made by certified check payable to "Treasurer, United States of America" and sent to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region V, P.O. Box 70753, Chicago, Illinois 60604. The first installment shall be paid within 20 days after

the filing of a fully executed copy of this Consent Agreement and Final Order and the next three installments shall be paid every ninety days thereafter until the full amount is paid.

A copy of the check shall also be sent to the Regional Hearing Clerk (5MFA-14) and to the Branch Secretary and to Counsel for Complainant, Air, Water, Toxics and General Law Branch (5C-TUB-03), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

8. Respondent's failure to comply with any provision of this Consent Agreement shall render the entire proposed penalty of \$17,000 immediately due and owing and shall be paid as provided in Paragraph 6 within 15 days of demand. Failure to comply with this Paragraph 7 shall result in referral of this matter to the U.S. Department of Justice for collection. The validity, amount, and appropriateness of the penalty is not subject to review in a collection proceeding. 15 U.S.C. § 2615(a)(4)(A).

9. On any amount overdue under either Paragraph 6 or 7, interest shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, after the first thirty (30) days that any amount under Paragraph 6 or 7 is overdue, a late payment handling charge of Twenty Dollars (\$20.00) is owed, and an additional charge of Ten Dollars (\$10.00) is owed for every subsequent thirty (30) day period that any monies are overdue. Also, a six percent per annum penalty shall

be applied on any principal amount not paid within ninety days after the Final Order is signed by the Regional Administrator.

10. This Consent Agreement constitutes the entire agreement between Complainant and Respondent.

11. Respondent consents to the issuance of the following Final Order and to the assessment of the \$4,000.00 civil penalty.

J.E. BERGER CORPORATION
Respondent

Dated: _____

9/11/87

BY: _____

David Gordon
Name DAVID GORDON
Title Pres.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, Complainant

Dated: _____

9/25/87

BY: _____

William H. Sanders III
William H. Sanders, III, P.E.
Director
Environmental Services Division
Region V
U.S. Environmental Protection
Agency
230 South Dearborn Street
Chicago, Illinois 60604

Dated: _____

J.E. Berger Corp.

J.E. Berger Corp.

ORDER

It is so Ordered, as agreed to by the parties and as stated in this Consent Agreement. This Order shall become effective upon filing with the Regional Hearing Clerk.

Date

9/28/87

for *Frank M. Covington*

Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604